



UNITED STATES MARINE CORPS
MARINE CORPS BASE
BOX 555010
CAMP PENDLETON CALIFORNIA 92055-5010

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30 MAR 1994

Mrs. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20544-0001

93-295

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APR 15 1994

MAIL BRANCH

Dear Ms. Searcy:

This responds to Petitioner Steven R. Bartholomew's Comment Re: Notice of Proposed Rulemaking and Expression of Interest; In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, San Clemente, CA - Channel 285A (MM Docket No. 93-295). The Petitioner urges the commission to retain Channel 285A at San Clemente. He proposes two sites for a radio tower that he claims comply with Commission rules and which he alleges obviate the need for the proposed rule. For the reasons set out below, Marine Corps Base, Camp Pendleton opposes the Petitioner's proposal.

Petitioner first proposes locating a tower on property leased by the Department of the Navy (DoN) to Southern California Edison (SCE). Petitioner asserts that SCE has preliminarily agreed to sublease land for a radio tower to him and posits that "...Camp Pendleton officials are now estopped from asserting any lease provision not allowing such land use" by California landlord-tenant law. Petitioner's position is factually and legally incorrect.

Petitioner asserts that Camp Pendleton is estopped from opposing the proposed radio tower because we allegedly approved two existing "radio communications towers" on the SCE leasehold. This argument is both irrelevant and misleading. The "towers" are simply 30'-40' microwave antennas used solely for internal communications at the San Onofre Nuclear Power Station (SONGS). Regardless, Petitioner's invocation of state law in this matter is inappropriate. The DoN has held the leasehold property in fee since 1943 and, as a Federal agency, is not subject to California landlord-tenant law (enclosure (1) pertains). Finally, and contrary to Petitioner's assertions, SCE has not agreed to sublease any property to the Petitioner.

Our firm position is that we oppose, and have the plenary power to reject, any SCE sublease for purposes unrelated to operations at SONGS. Accordingly, the microwave antennas described by the Petitioner conform to our intent while the petitioner's proposal clearly does not. Indeed, the proposed radio tower is inimical to our long-term plans for the property and would present an unacceptable hazard to the low-altitude tactical aviation maneuvers common in the areas surrounding the SCE leasehold. SCE's concurrence in our position is evidenced by enclosure (2). In sum, neither law nor equity estop Camp Pendleton from rejecting petitioner's request to locate a radio tower on the SCE leasehold.

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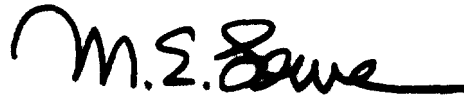
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We also oppose petitioner's proposal for locating a radio tower bordering the northern boundary of Camp Pendleton. For the record, the property that petitioner labels as belonging to San Onofre State Park is, in fact, leased to the state by Camp Pendleton. Accordingly, the proposed tower would be bordering Camp Pendleton, not state, property. Nonetheless, whether the transmitter tower measures 300 or 1015 feet above sea level, it would present a clear and unacceptable hazard to the frequent low-altitude tactical aircraft flights in and around Camp Pendleton.

For the foregoing reasons, we urge rejection of Petitioner's proposal. We will continue to reject any future proposals to build transmitter towers on property within the contiguous borders of Camp Pendleton and will oppose such construction in areas closely bordering our property.

If you have any questions regarding this matter, please contact Colonel Fisher or Mr. Larry Rannals at (619) 725-6513.

Sincerely,



M. E. LOWE
Colonel, U.S. Marine Corps
Chief of Staff

Encl:

- (1) Decree on Declaration of Taking of 5 Jan 43
- (2) Cohn and Marks Reply Comments of 16 Mar 94 to the FCC

Copy to:
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2244 Walnut Grove Ave (Rm 349)
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San Diego, CA 92132-5189

FRANCIS E CROSS

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

125,620 ACRES OF LAND, MORE OR
LESS, IN SAN DIEGO COUNTY AND
ORANGE COUNTY, CALIFORNIA;
MAUD LEE FLOOD, et al,

Defendants

No. 197-SD Civil

DECREE ON
DECLARATION OF TAKING

COMES NOW the plaintiff, United States of America, by Lee V. Silverstein, United States Attorney for the Southern District of California, and C. H. SCHARNIKOW and WM. J. ADAMS, Special Attorneys, Lands Division, Department of Justice, and moves the Court to enter a Decree on Declaration of Taking filed in the above-entitled cause on December 31, 1942, and for an order fixing the date when possession of the property herein described is to be surrendered to the United States of America, and upon consideration thereof and of the Amended Complaint in Condemnation filed herein, said Declaration of Taking, and the statutes in such cases made and provided, the Court finds and decrees as follows:

First: That the United States of America is entitled to acquire property by eminent domain for the purposes as set out and prayed for in said Amended Complaint;

Second: That an Amended Complaint in Condemnation was filed at the request of the Acting Secretary of the Navy, acting for and in the capacity of the Secretary of the Navy of the United States of America,

Recorded 5 Jan 1943 Book 1448 pg 192 O.R.

ENCLOSURE (1)

2 the authority empowered by law to acquire the property described in
3 said Amended Complaint, and also under authority of the Attorney General
4 of the United States;

5 Third: That said Amended Complaint in Condemnation and Declara-
6 tion of Taking state the authority under which and the public use for
7 which said property was taken, that the Acting Secretary of the Navy is
8 the person duly authorized and empowered by law to acquire property
9 such as is described in the Amended Complaint, for the public use as
10 provided for in the Acts of Congress hereinafter set forth, and that
11 the Attorney General of the United States is the person authorized by
12 law to direct the institution of such condemnation proceedings;

13 Fourth: That a proper description of the lands sought to be
14 taken, sufficient for identification thereof, is set out in said Decla-
15 ration of Taking;

16 Fifth: That a statement of each estate or interest in said lands
17 taken for said public use is set out in said Declaration of Taking;

18 Sixth: That a map or plat showing the lands taken is annexed
19 to and incorporated in said Declaration of Taking;

20 Seventh: That a statement is contained in said Declaration of
21 Taking of a sum of money, estimated by said acquiring authority to be
22 just compensation for said lands, in the amount of FOUR MILLION TWO
23 HUNDRED THIRTY-NINE THOUSAND AND SIXTY-TWO DOLLARS (\$4,239,062.00), and
24 that said sum was deposited in the Registry of this Court, for the use
25 of the persons entitled thereto, upon and at the time of the filing of
26 said Declaration of Taking;

27 Eighth: That there is a statement in said Declaration of Taking
28 that the estimated ultimate award of compensation for the taking of
29 said property, in the opinion of the Acting Secretary of the Navy of
30 the United States of America, will be within the limits prescribed by
31 Congress to be paid as the price therefor;

1 And the Court having fully considered said Amended Complaint in
2 Condemnation, and the Declaration of Taking, and the statutes in such
3 cases made and provided, is of the opinion that the United States of
4 America is entitled to take the property hereinafter described, and to
5 have the estates or interests hereinafter set forth, vested in it pur-
6 suant to and in accordance with the Acts of Congress approved August 1,
7 1898 (28 Stat., 357; U.S.C. Title 40, Sec. 257), February 28, 1931 (46
8 Stat., 1421; U.S.C. Title 40, Sec. 258a), February 6, 1942 (Public Law
9 458, 77th Congress), and March 27, 1942 (Public Law 507, 77th Congress),
10 funds having been appropriated by the Act approved February 7, 1942
11 (Public Law 441, 77th Congress), and any Acts amendatory thereof or
12 supplementary thereto;

13 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the fee
14 simple title to the lands hereinafter described, subject to existing
15 easements for railroad rights-of-way and public highway designated as
16 U.S. No. 101, and to all existing public utility easements, be, and
17 is hereby, vested in the United States of America, and said lands are
18 deemed to be condemned and taken, and are condemned and taken, for the
19 use of the United States, and the right to just compensation for the
20 same is vested in the persons entitled thereto when said compensation
21 shall be ascertained and awarded in this proceeding and established by
22 judgment thereunder, pursuant to law. The land so condemned and taken
23 is described in the sheets annexed hereto marked "Schedule B", and by
24 such reference is included herein as if herein set out in full.

25 It appearing to the Court that upon the filing of plaintiff's
26 original Complaint herein, to wit: on July 9, 1942, this Court made its
27 Order for the delivery to plaintiff of the immediate possession of the
28 real property described in plaintiff's Amended Complaint herein and in
29 Schedule "B" hereto attached, to which reference is hereby made, and
30 that plaintiff is now, by virtue of said Order, in full possession,
31 occupancy, and use thereof and is entitled to the full and exclusive
32

1 possession, occupancy, and use thereof, IT IS FURTHER ORDERED, ADJUDGED,
2 AND DECREED that the possession of said real property heretofore granted
3 to plaintiff by the Order for possession dated July 9, 1943, and filed
4 herein on said date, be and the same hereby is ratified, confirmed, and
5 continued, and that possession of the said real property, and the whole
6 thereof, be delivered to plaintiff, United States of America, forth-
7 with.

8 This cause is held open for such other and further orders, judg-
9 ments, and decrees as may be necessary in the premises.

10 DATED: This 5th day of January, 1948, at 2⁴⁵ o'clock P.M.

11
12 JEREMIAH NETERER
13 United States District Judge

14
15 PRESENTED BY:

16 LEO V. SILVERSTEIN
17 United States Attorney

18 C. H. SCHARNIKOW
19 WM. J. ADAMS
20 Special Attorneys
Lands Division
Department of Justice

21 By C. H. Scharnikow
22 C. H. SCHARNIKOW

23 ATTORNEYS FOR PLAINTIFF.
24
25
26
27
28
29
30
31
32

1 All that land lying and being situate in the County of San Diego and
2 in the County of Orange, State of California, more particularly described as
3 follows:

4 PARCEL "A"

5 Those portions of Rancho Santa Margarita y las Flores, in
6 San Diego County, California, as shown on Record of Survey Map
7 No. 794, filed in the office of the County Recorder of said
8 San Diego County, January 17, 1940, and of Rancho Mission Viejo
9 in Orange County, State of California, as shown on Record of
10 Survey Map filed 2/18/42 in Book 12, Page 5, in the office of
11 the County Recorder of Orange County, bounded and described as
12 follows:

13 Beginning at the intersection of the Northerly boundary line
14 of said Rancho Santa Margarita y las Flores, (which line is the
15 line between San Diego County and Orange County), and the mean
16 High Tide line of the Pacific Ocean, as shown on said Record of
17 Survey Map No. 794; thence E. by the 13° 42' 00" E. also said nor-
18 therly boundary line, a distance of 24,838.34 feet, more or less,
19 to Intersection Corner, as shown on said Record of Survey Map
20 No. 794; thence leaving said line between Orange and San Diego
21 Counties, and running in a general Northerly direction along
22 the line delineated on said Record of Survey Map of a portion
23 of Rancho Mission Viejo, the following courses and distances:

24 S. 87° 01' 11" E. a distance of 517.38 feet;
25 N. 46° 33' 01" E. a distance of 136.71 feet;
26 N. 27° 52' 31" E. a distance of 211.40 feet;
27 N. 58° 52' 31" E. a distance of 361.10 feet;
28 S. 80° 45' 54" E. a distance of 1495.74 feet;
29 N. 60° 32' 36" E. a distance of 453.52 feet;
30 N. 37° 14' 36" E. a distance of 187.77 feet;
31 N. 67° 37' 45" E. a distance of 439.85 feet;
32 N. 13° 39' 00" E. a distance of 254.95 feet;
33 N. 58° 25' 25" E. a distance of 2311.06 feet;
34 N. 79° 35' 28.7" E. a distance of 7611.23 feet;
35 N. 49° 26' 12" E. a distance of 2601.41 feet;
36 N. 36° 54' 06" E. a distance of 206.12 feet;
37 N. 51° 52' 15" E. a distance of 1212.29 feet;
38 N. 21° 12' 21" E. a distance of 380.75 feet;
39 N. 67° 24' 44" E. a distance of 106.27 feet;
40 S. 74° 40' 49" E. a distance of 157.78 feet;
41 N. 59° 25' 13" E. a distance of 229.23 feet;
42 N. 88° 35' 10" E. a distance of 268.78 feet;
43 N. 32° 05' 37" E. a distance of 485.65 feet;
44 N. 52° 17' 37" E. a distance of 706.85 feet;
45 S. 87° 34' 23" E. a distance of 139.70 feet;
46 N. 15° 42' 27" E. a distance of 35.56 feet;
47 N. 76° 31' 17" E. a distance of 649.02 feet;
48 N. 3° 24' 07" E. a distance of 427.29 feet;
49 N. 61° 25' 47" E. a distance of 308.61 feet;
50 N. 25° 33' 27" E. a distance of 704.84 feet;
51 N. 24° 15' 53" E. a distance of 1106.39 feet;
52 N. 3° 34' 43" E. a distance of 360.70 feet;
53 N. 25° 35' 57" E. a distance of 290.09 feet;
54 S. 62° 47' 03" E. a distance of 181.03 feet;
55 N. 80° 39' 37" E. a distance of 119.26 feet;
56 N. 30° 17' 47" E. a distance of 238.18 feet;
57 N. 68° 47' 07" E. a distance of 210.69 feet;

1 N. 28° 45' 57" E. a distance of 555.16 feet;
 2 N. 67° 52' 47" E. a distance of 116.77 feet to a point
 3 on the San Diego County-Orange County line as shown on said
 4 Record of Survey Map of a portion of Rancho Mission Viejo, said
 5 point, being a Corner of the Rancho Santa Margarita y las Flores
 6 bearing N. 0° 03' 48.5" E. a distance of 4998.52 feet from
 7 Mission Viejo Corner No. 7, as shown on said Record of Survey
 8 Map No. 794; thence N. 43° 25' 58" E. along the boundary line
 9 of said Rancho Santa Margarita, a distance of 9720.87 feet to
 10 Rancho Santa Margarita Corner No. 44 as shown on said Record
 11 of Survey Map No. 794; thence S. 38° 23' 33" E. a distance of
 12 7393.16 feet to Rancho Santa Margarita Corner No. 45, as shown
 13 on said Record of Survey Map No. 794; thence S. 10° 11' 15.8"
 14 W. a distance of 6290.58 feet to Rancho Santa Margarita Corner
 15 No. 46, as shown on said Record of Survey Map No. 794; thence
 16 S. 89° 34' 40" E. a distance of 1574.40 feet to a point; thence
 17 N. 39° 43' 20" E. a distance of 1055.56 feet to a point; thence
 18 N. 63° 51' 20" E. a distance of 615.97 feet to a point; thence
 19 N. 8° 00' 10" W. a distance of 792.76 feet to a point; thence
 20 N. 14° 41' 50" E. a distance of 500.12 feet to a point; thence
 21 S. 75° 48' 40" E. a distance of 1084.65 feet to Rancho Santa
 22 Margarita Corner No. 52 as shown on said Record of Survey Map
 23 No. 794; thence S. 70° 07' 27.87" E. a distance of 17,681.98
 24 feet to Rancho Santa Margarita Corner No. 53, as shown on said
 25 Record of Survey Map No. 794; thence S. 53° 37' 05" E. a distance
 26 of 2981.02 feet to Rancho Santa Margarita Corner No. 54, as
 27 shown on said Record of Survey Map No. 794; thence S. 12° 18'
 28 00.04" E. a distance of 5102.00 feet to Rancho Santa Margarita
 29 Corner No. 55 as shown on said Record of Survey Map No. 794;
 30 thence S. 17° 43' 13.46" E. a distance of 1623.13 feet to
 31 Rancho Santa Margarita Corner No. 56, as shown on said Record
 32 of Survey Map No. 794; thence S. 31° 49' 30.6" E. a distance
 33 of 5275.61 feet to Rancho Santa Margarita Corner No. 57 as
 34 shown on said Record of Survey Map No. 794; thence S. 50° 16'
 35 00.32" E. a distance of 5227.01 feet to an intersection with
 36 the partition line as shown on Record of Survey Map No. 983,
 37 filed February 11, 1942 in the office of the County Recorder
 38 of San Diego County; thence in a general Southwesterly direction
 39 along said partition line the following courses and distances:
 40

41 S. 33° 44' 41" W. a distance of 2456.12 feet;
 42 S. 43° 21' 07" W. a distance of 1161.73 feet;
 43 N. 79° 07' 26" W. a distance of 1713.12 feet;
 44 S. 53° 36' 56" W. a distance of 112.12 feet;
 45 S. 68° 25' 10" W. a distance of 323.71 feet;
 46 S. 36° 44' 10" W. a distance of 520.05 feet;
 47 S. 63° 19' 40" W. a distance of 220.17 feet;
 48 S. 75° 43' 42" W. a distance of 366.23 feet;
 49 S. 36° 44' 10" W. a distance of 266.59 feet;
 50 S. 72° 07' 10" W. a distance of 712.57 feet;
 51 S. 62° 36' 26" W. a distance of 894.95 feet;
 52 S. 48° 48' 47" W. a distance of 3427.45 feet;
 53 S. 73° 13' 12" W. a distance of 610.33 feet;
 54 N. 67° 43' 10" W. a distance of 444.54 feet;
 55 N. 52° 46' 50" W. a distance of 265.03 feet;
 56 N. 12° 27' 20" W. a distance of 433.89 feet;
 57 N. 65° 45' 41" W. a distance of 998.94 feet;
 58 S. 82° 39' 00" W. a distance of 220.76 feet;
 59 N. 80° 23' 58" W. a distance of 1322.88 feet;
 60 S. 54° 20' 16" W. a distance of 367.09 feet;
 61 S. 0° 11' 36" E. a distance of 757.20 feet;
 62 S. 19° 00' 09" W. a distance of 725.06 feet;

1 S. 62° 53' 39" W. a distance of 1042.55 feet;
 2 S. 11° 12' 54" W. a distance of 858.53 feet;
 3 S. 5° 14' 21" E. a distance of 291.90 feet;
 4 S. 31° 26' 21" E. a distance of 385.80 feet;
 5 S. 5° 14' 41" E. a distance of 910.92 feet;
 6 S. 12° 53' 10" W. a distance of 530.57 feet;
 7 S. 44° 01' 30" W. a distance of 525.93 feet;
 8 S. 56° 29' 20" W. a distance of 601.94 feet;
 9 S. 72° 06' 50" W. a distance of 417.18 feet;
 10 S. 54° 54' 30" W. a distance of 137.08 feet;
 11 S. 52° 07' 00" W. a distance of 180.35 feet;
 12 S. 62° 34' 50" W. a distance of 389.48 feet;
 13 S. 5° 43' 10" W. a distance of 445.09 feet;
 14 S. 15° 38' 50" E. a distance of 248.81 feet;
 15 S. 25° 51' 50" W. a distance of 291.18 feet;
 16 S. 29° 58' 01" W. a distance of 549.55 feet;
 17 S. 64° 20' 35" W. a distance of 1483.03 feet;
 18 S. 49° 33' 33" W. a distance of 1376.37 feet;
 19 N. 89° 28' 35" W. a distance of 435.67 feet;
 20 N. 76° 38' 09" W. a distance of 736.63 feet;
 21 S. 83° 28' 41" W. a distance of 1588.67 feet;
 22 N. 79° 42' 50" W. a distance of 910.01 feet;
 23 N. 52° 18' 09" W. a distance of 152.09 feet;
 24 N. 74° 09' 23" W. a distance of 987.53 feet;
 25 S. 81° 40' 41" W. a distance of 416.14 feet;
 26 S. 31° 22' 20" W. a distance of 212.90 feet;
 27 S. 12° 27' 31" W. a distance of 214.62 feet;
 28 S. 58° 59' 13" W. a distance of 983.78 feet;
 29 S. 48° 02' 04" W. a distance of 2896.87 feet;
 30 S. 58° 32' 37" W. a distance of 3757.47 feet;
 31 N. 82° 08' 01" W. a distance of 1879.19 feet;
 32 S. 85° 24' 54" W. a distance of 3441.05 feet;
 33 S. 2° 22' 58" E. a distance of 1444.65 feet;
 34 S. 58° 42' 00" W. a distance of 281.86 feet;
 35 S. 5° 35' 00" W. a distance of 305.26 feet;
 36 S. 12° 41' 10" E. a distance of 272.17 feet;
 37 S. 26° 07' 25" E. a distance of 691.82 feet;
 38 S. 15° 54' 37" W. a distance of 823.19 feet;
 39 S. 1° 11' 05" W. a distance of 1227.02 feet;
 40 S. 29° 49' 40" W. a distance of 933.63 feet;
 41 S. 9° 15' 00" W. a distance of 1740.69 feet;
 42 S. 20° 25' 55" E. a distance of 679.69 feet;
 43 S. 1° 11' 40" E. a distance of 826.09 feet;
 44 S. 54° 18' 03" W. a distance of 1633.33 feet;
 45 S. 46° 30' 03" W. a distance of 26.68 feet;
 46 S. 43° 59' 57" E. a distance of 73.07 feet; to the begin-
 47 ning of a curve concave to the Northeast; thence Southeasterly along
 48 said curve, having a radius of 1450 feet, through a central angle
 49 of 8° 30' 49", a distance of 215.45 feet; thence S. 18° 30' 46" E.
 50 tangent to said curve, a distance of 266.43 feet; thence S. 37° 23'
 51 14" W. a distance of 76.65 feet; thence S. 36° 31' 33" E. a distance
 52 of 1346.15 feet; thence S. 13° 27' 13" W. a distance of 5450.20
 53 feet more or less to the Mean High Tide Line of the Pacific Ocean,
 54 being the easterly boundary line of said Rancho Santa Margarita y
 55 las Flores; thence Northwesterly along the Mean High Tide Line of the
 56 Pacific Ocean as shown on said Record of Survey Map No. 724, to the
 57 point of beginning. Containing an area of 52,420 acres more or less.

30

31

32
 JHS:LMC
 1-4-43

PARCEL "B"

That portion of the Rancho Santa Margarita y las Flores, in the County of San Diego, State of California, as shown on Record of Survey Map No. 794 filed in the office of the County Recorder of said San Diego County January 17, 1940, bounded and described as follows:

Beginning at the intersection of the Southeasterly boundary line of said Rancho Santa Margarita y las Flores, and the Mean High Tide Line of the Pacific Ocean, as shown on said Record of Survey No. 794; thence along said Southeasterly boundary line, N. 48° 04' 44.69" E. a distance of 51,482.42 feet more or less to Corner of No. 2 of said Rancho Santa Margarita y las Flores as shown on said Record of Survey No. 794; thence N. 7° 04' 52.98" E. along the Easterly boundary line of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey No. 794, a distance of 10,645.78 feet to a point on the Southerly line of Section 2, Township 10 South, Range 4 West, as shown on said Record of Survey No. 794; thence N. 89° 10' 29" W. a distance of 11,881.32 feet along the Southerly lines of said Section 2, and Sections 3 and 4, Township 10 South, Range 4 West, to the Southwesterly corner of said Section 4, as shown on said Record of Survey No. 794; thence N. 0° 47' 11.05" E. along the Easterly line of said Section 4, Township 10 South, Range 4 West, and Sections 33 and 38, Township 9 South, Range 4 West, to the centerline of the Santa Margarita River; thence in a general Northeasterly direction along said centerline of the Santa Margarita River, being also the Northwesterly and Northerly boundary line of the Naval Ammunition Dump, Fallbrook, through Sections 28, 21, 22, 15 and 14, Township 9 South, Range 4 West, as shown on said Record of Survey Map No. 794, to an intersection with the South line of the Northeast quarter of said Section 14; thence Easterly along the Southerly line of said Northeast quarter of Section 14 to a point on the Easterly line of said Section 14, as shown on said Record of Survey Map No. 794; thence Easterly along the Southerly line of the North half of Section 13, Township 9 South, Range 4 West, to an intersection with the Easterly boundary of the Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 794; thence N. 7° 04' 52.98" E. along said Easterly boundary to Corner No. 1 of said Rancho Santa Margarita y las Flores as shown on said Record of Survey Map No. 794; thence S. 89° 29' 24" W. a distance of 1946.09 feet to Corner No. 63 of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 794; thence N. 84° 08' 07.65" W. a distance of 3886.55 feet to Corner No. 62 of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 794; thence N. 58° 49' 13.46" W. a distance of 7423.95 feet to Corner No. 61 of said Rancho Santa Margarita y las Flores, as shown on Record of Survey No. 794; thence S. 57° 18' 15.34" E. a distance of 12,065.32 feet to Corner No. 60 of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 794; thence S. 89° 27' 46.73" W. a distance of 7991.79 feet to Corner No. 59, of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey 794; thence N. 30° 57' 40.93" W. a distance of 4875.19 feet to Corner No. 58, of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 794; thence N. 50° 16' 00.32" W. along the line between Corner No. 58 and Corner No. 57, of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 794, a distance of 3861.76 feet to an intersection with the partition line as shown on Record of Survey Map No. 983, filed in the office of the County Recorder of San Diego County; thence in a generally Southwesterly direction through the Rancho Santa Margarita y las Flores along said partition

line, the following courses and distances:

S. 33° 44' 41" W., 2456.19 feet; S. 43° 21' 07" W. 1464.78 feet; N. 79° 00' 26" W. 1319.19 feet; S. 53° 36' 55" W. 449.48 feet; S. 68° 25' 10" W. 323.74 feet; S. 38° 44' 10" W. 520.05 feet; S. 63° 19' 40" W. 230.45 feet; S. 75° 43' 42" W. 366.85 feet; S. 36° 44' 10" W. 366.59 feet; S. 72° 07' 10" W. 712.53 feet; S. 62° 36' 26" W. 894.95 feet; S. 48° 48' 47" W. 3427.49 feet; S. 73° 13' 12" W. 610.33 feet; N. 67° 43' 10" W. 444.54 feet; N. 52° 46' 50" W. 265.03 feet; N. 12° 27' 20" W. 433.89 feet; N. 65° 45' 41" W. 988.94 feet; S. 82° 39' 00" W. 220.76 feet; N. 80° 23' 58" W. 1322.88 feet; S. 54° 20' 16" W. 367.09 feet; S. 0° 11' 36" E. 757.20 feet; S. 19° 00' 09" W. 725.06 feet; S. 62° 53' 39" W. 1042.55 feet; S. 11° 12' 54" W. 858.53 feet; S. 5° 14' 21" E. 281.90 feet; S. 31° 26' 21" E. 365.80 feet; S. 5° 14' 41" E. 910.92 feet; S. 12° 53' 10" W. 530.57 feet; S. 44° 01' 30" W. 525.93 feet; S. 56° 29' 20" W. 601.94 feet; S. 72° 06' 50" W. 417.18 feet; S. 54° 54' 30" W. 137.08 feet; S. 52° 07' 00" W. 180.35 feet; S. 62° 34' 50" W. 389.48 feet; S. 5° 43' 10" W. 445.09 feet; S. 15° 38' 50" E. 248.81 feet; S. 25° 51' 50" W. 291.18 feet; S. 29° 58' 01" W. 549.55 feet; S. 64° 20' 35" W. 1483.03 feet; S. 49° 33' 33" W. 1376.37 feet; N. 89° 28' 35" W. 465.07 feet; N. 76° 38' 09" W. 766.63 feet; S. 83° 20' 41" W. 1588.61 feet; N. 79° 42' 50" W. 910.01 feet; N. 52° 18' 00" W. 152.09 feet; N. 74° 09' 23" W. 987.53 feet; S. 81° 40' 41" W. 416.14 feet; S. 31° 22' 20" W. 212.90 feet; S. 12° 27' 31" W. 214.62 feet; S. 50° 59' 13" W. 983.78 feet; S. 48° 02' 04" W. 2896.87 feet; S. 58° 32' 37" W. 3757.47 feet; N. 82° 08' 01" W. 1879.19 feet; S. 85° 24' 54" W. 3441.05 feet; S. 2° 22' 58" E. 1444.65 feet; S. 58° 42' 00" W. 281.86 feet; S. 5° 35' 00" W. 305.26 feet; S. 12° 41' 10" E. 272.17 feet; S. 26° 07' 25" E. 691.82 feet; S. 15° 54' 37" W. 823.19 feet; S. 1° 11' 05" W. 1227.02 feet; S. 29° 49' 40" W. 983.63 feet; S. 9° 15' 00" W. 1740.69 feet; S. 20° 25' 55" E. 679.82 feet; S. 1° 11' 40" E. 826.09 feet; S. 54° 18' 03" W. 1673.33 feet; S. 46° 30' 03" W. 26.68 feet; S. 43° 59' 57" E. 73.07 feet to the beginning of a tangent curve concave to the Northeast; thence Southeasterly along said curve, having a radius of 1450 feet, through a central angle of 8° 30' 49" a distance of 215.45 feet; thence S. 52° 30' 46" E. tangent to said curve, a distance of 266.43 feet; thence S. 37° 29' 14" W. a distance of 76.65 feet; thence S. 36° 31' 33" E. a distance of 1346.15 feet; thence S. 13° 27' 13" W. a distance of 3430.20 feet more or less to the Mean High Tide Line of the Pacific Ocean, being the Westerly boundary line of said Rancho Santa Margarita y las Flores; thence Southeasterly along said Mean High Tide Line of the Pacific Ocean, as shown on said Record of Survey Map No. 794, to the point of beginning. Containing an area of 71,200 acres more or less.

As delineated on that certain plat entitled: "Rancho Santa Margarita, San Diego County, California, conforming to recorded sectionizing survey" dated August 1939, altered 7-29-42.

* Denotes degrees.

BEFORE THE

Federal Communications Commission

In re Matter of)	MM DOCKET NO. 93-295
)	
Amendment of Section 73.202(b))	RM-8362
Table of Allotments,)	
FM Broadcast Stations.)	
(San Clemente, California))	

REPLY COMMENTS OF MT. WILSON FM BROADCASTERS, INC.

Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), by its attorneys, files these Reply Comments in opposition to the Comments submitted herein by Steven R. Bartholomew. Bartholomew's claims that there are two transmitter sites available from which a San Clemente FM station could broadcast on Channel 285A with no deviation or only minor deviation from the requirements of the Commission's rules is without foundation. Neither of the sites described by Bartholomew is available for this purpose. Even if they were, they would present the same problems as those which led the Commission to refuse to authorize a San Clemente station on Channel 285A and to direct the staff to delete the Channel from the Table of Allocations. In support of its position, Mt. Wilson states:

1. The only claim of the availability of a useable transmitter site made by Bartholomew which the Commission has not in terms already considered and rejected concerns property under lease from Camp Pendleton to Southern California Edison.

Bartholomew asserts that Steven Conroy of Southern California Edison^{1/} "verbally indicated that they may be willing to lease tower space" for an FM broadcast antenna (Comments, p. 2). This assertion bears an uncanny resemblance to the statement originally made in the rule making proceeding which led to the unfortunate allotment of the channel, that Camp Pendleton authorities "might consider locating a transmitter within the boundaries of the Camp." On The Beach Broadcasting, 8 FCC Rcd. 3123, 3124 (1993). Just as that equivocal statement proved to have no practical basis whatsoever, so too does the alleged statement on which Bartholomew relies.

2. Mt. Wilson has provided to Mr. Conroy, to Jack Wallace, Supervisor, Nuclear Affairs, and to a member of the legal staff of Southern California Edison, copies of Bartholomew's Comments. Each of the three has assured Mt. Wilson that, despite the quasi-legal meanderings and the alleged statement of Conroy contained in the Comments, under no circumstances would Southern California Edison permit use of the leased property without the prior written approval of the authorities at Camp Pendleton. For the purposes of this proceeding, it is not necessary to examine the terms of the lease between Camp Pendleton and Southern California Edison to ascertain whether the lessee has the power to permit use of the property by Bartholomew. It is enough for the Commission to know that Camp Pendleton would clearly not permit such a use,

1/ Bartholomew has incorrectly referred to Conroy as Director of Corporate Communications.

and that Southern California Edison would not consider the request, based upon the Marine Corps' stated position against such a use.

3. Attached hereto as Attachment A, primarily for the edification of Bartholomew, an avowed latecomer to the proceeding, is a copy of a letter from the Chief of Staff at Camp Pendleton to the Commission, filed last August which sets forth in unequivocal terms the opposition of the authorities on the base to any such use of its leased property as is proposed by Bartholomew. That letter also negates unequivocally Bartholomew's assertion (Comments, pp. 7-8) that a site is available outside the boundaries of Camp Pendleton on property leased by the Atchison, Topeka & Santa Fe Railroad. A proposal to use this very site in On The Beach Broadcasting elicited the attached response from the authorities at Camp Pendleton.

4. On September 22, 1992, in On The Beach Broadcasting, the Mass Media Bureau also opposed any use of the ATSF site because an FM broadcast station on that site "would significantly impair the effectiveness of the Commission's Fixed Automatic Direction Finder system located in San Diego, California." That system is designed, in part, to assist the United States Coast Guard in locating transmissions at sea during search and rescue operations, and the interference would leave a large span of ocean without adequate coverage, with a very serious impact on the life and safety of persons aboard vessels off the coast of Southern California.

5. Even if either or both sites described by Bartholomew were available, the history of this proceeding would still compel the deletion of Channel 285A. Since this is an allotment proceeding, it is significant not only that the sites proposed by Bartholomew are short-spaced, but that in light of changes in the separations requirements since the original allotment of Channel 285A, there is no possible non-short-spaced site available for that channel except 30 miles out in the ocean. There is attached hereto, as Attachment B, an Engineering Statement of John J. Davis, Mt. Wilson's engineering consultant, which clearly establishes that fact.

6. The Commission has made clear in the NPRM that the allotment of Channel 285A to San Clemente should be considered as though it were a new allocation. Indeed, in paragraph 9 of the NPRM, the Commission imposed conditions which are much more rigorous with respect to the availability of a transmitter site than in the normal allotment rulemaking. Bartholomew has failed to demonstrate, as required, that he has taken positive measures to obtain assurances from the owner (Camp Pendleton) of its proposed sites that he will be able to buy or lease those locations. Even more significantly, he has failed utterly to provide the required evidence that the military policy of Camp Pendleton has changed.

7. Any proposal to use the Bartholomew proposed sites or any other site located on land would violate the separations requirements. On The Beach Broadcasting establishes that the

public interest could not be served by such a waiver; the proved interference effects are too great. Bartholomew attempts to establish that interference to Mt. Wilson would not occur because of terrain features, a showing which for this purpose is gravely inadequate. He does not even consider the vast interference to any San Clemente proposal which would result.

8. Bartholomew's expression of interest in retention of Channel 285A at San Clemente flies directly in the face of the lessons learned through On The Beach Broadcasting. Mt. Wilson has not here attempted to describe all of the efforts of applicants and potential applicants in that case to find a suitable transmitter site or to establish some overwhelming need for a second FM station at San Clemente. Bartholomew's essentially unsupported desires cannot overcome the vast factual data which prove his desires to be unattainable.

Respectfully submitted,

MT. WILSON FM BROADCASTERS, INC.

By Stanley S. Neustadt
Stanley S. Neustadt

By Robert B. Jacobi
Robert B. Jacobi

Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, DC 20036
(202) 293-3860

Its Attorneys

Date: March 16, 1994

ATTACHMENT A

UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP PENDLETON, CALIFORNIA 92055-4001

IN REPLY REFER TO

11011
B11/SC

13 AUG 1992

Mrs. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, DC 20544-0001

Dear Ms. Searcy:

We have reviewed the Petition for Leave to Amend and Amendment (hereinafter, "Petition") as well as the Consolidated Reply and Comments (hereinafter, "Reply") submitted by On The Beach Broadcasting, in MM Docket No. 89-503. We have also reviewed the month-to-month lease wherein the Atchison, Topeka & Santa Fe Railway Company (hereinafter, "AT&SF") purports to convey an interest in property to Beach for purposes of erecting a broadcast tower.

The subject property is located within the boundaries of Camp Pendleton, California, and is represented by the shaded area in the drawing attached hereto as enclosure (1). This small parcel, along with over 100,000 additional acres, was condemned and taken by the United States by Order of Possession dated July 9, 1942, and ratified by court order dated January 5, 1943. A true and correct copy of the Decree on Declaration of Taking (hereinafter, Decree), and the legal description of property subject to the taking (which the Decree incorporates by reference as "Schedule B"), are attached hereto as enclosures (2) and (3), respectively. In short, the property in question belongs to the United States of America. The lease executed by Beach and AT&SF is therefore null and void.

Pursuant to the Decree the United States Government took fee simple ownership of all land comprising Camp Pendleton, subject to existing easements including railroad rights-of-way. As demonstrated in enclosure (1), the property in issue is north of and adjacent to the AT&SF right-of-way. Since the property is outside the right-of-way, the AT&SF has no interest in the property whatsoever; not by fee, and not by easement. Beach's application should be denied solely on this ground.

Additional reasons require denial. The proposed antenna tower is incompatible with the needs of the Marine Corps and poses a major threat to aircraft. Contrary to Beach's assertions, exercise "Tandem Thrust" was conducted on, over and through the area between July 12 - 20, 1992. This exercise involved over 20,000 Army, Navy, Air Force and Marine Corps personnel, 19 ships and submarines and 200 aircraft. These aircraft are required to fly over the proposed tower site at altitudes lower than the height of the tower. We cannot allow our personnel and air assets to be jeopardized by the proposed tower. Beach's application should, therefore, be denied.

11011

B11/SC

19 AUG 1992

In the event that the Federal Communications Commission does grant Beach's application, Beach can expect vigorous opposition to the validity of AT&SF's lease of the subject property. AT&SF and/or its leasing agent are hereby put on notice that this and any future attempt to convey any interest in property belonging to the United States will not be tolerated.

If you have any questions regarding this matter, please contact Colonel Richard E. Ouellette at the address shown above or at (619) 725-6115.

Sincerely,



M. E. Lowe

Colonel, U.S. Marine Corps
Chief of Staff

Encl:

- (1) Map of subject property
- (2) Decree on Declaration of Taking
of 5 Jan 43
- (3) Legal description of property
(known as Schedule "B")

Copy to:

Mr. Mike Wagner
On The Beach Broadcasting
484 Calle Amigo
San Clemente, CA 92672-0001

Mr. Tom McCulloch
Catellus Management Corporation
1065 Pacificcenter Drive, Suite 200
Anaheim, CA 92806-0001

The Atchison, Topeka and Santa Fe
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11011
BI1/SC

Mr. Albert Aguilar
Radio Station KPLS
15292-1 Batavia
Orange, CA 92667-0001

Chief, Data Management Staff
Federal Communications Commission
1919 M Street, N.W., Room 350
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Hearing Branch
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John I. Riffer, Esq.
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1919 M Street, N.W., Room 602
Washington, DC 20554-0001

SENT BY:

3-25-94 ; 14:28 ;

COHN and MARKS-16197255401--1124001:#10/17

ATTACHMENT B

ENGINEERING EXHIBIT

COMMENTS ON THE PROPOSED DELETION
OF CHANNEL 285A
ALLOTTED TO
SAN CLEMENTE, CALIFORNIA

PREPARED FOR:

MOUNT WILSON FM BROADCASTERS, INC.
1500 COTNER AVENUE
POST OFFICE BOX 250028
LOS ANGELES, CALIFORNIA 90025

MARCH 10, 1994

PREPARED BY:

JOHN J. DAVIS
CONSULTING ENGINEER
POST OFFICE BOX 128
SIERRA MADRE, CALIFORNIA 91025-0128
(818) 355-6909
FAX: (818) 355-4890

1.0 INTRODUCTION

This Engineering Exhibit was prepared for MOUNT WILSON FM BROADCASTERS, INC., licensee of FM station KKGQ, Channel 286B, licensed to Los Angeles, California, to support its comments related to the proposed deletion of Channel 285A which is allotted to San Clemente, California. It will be shown that there is no area where a Channel 285A transmitter could be located and comply with the mileage separation requirements of the Commission's Rules.

2.0 MILEAGE SEPARATION REQUIREMENTS

There are three existing Class B stations that determine the acceptable areas where a Channel 285A transmitter could be located and comply with the provisions of Section 73.207(b)(1) of the Rules:

<u>STATION</u>	<u>CITY OF LICENSE</u>	<u>CHANNEL</u>	<u>REQUIRED SEPARATION</u>
KKGQ	Los Angeles, CA	+1st Adj. 286B	113 km
KDES	Palm Springs, CA	-1st Adj. 284B	113 km
KCBQ	San Diego, CA	+2nd Adj. 287B	69 km

On Figure 1, which is a reduction of a portion of USGS topographic map, California South (scale 1:500,000), is plotted the required separation distance for each of the

above three stations. It can be seen that there is no area where a Channel 285A transmitter can be located without violating Section 73.207(b)(1). The only location which does comply with 73.207(b)(1) is in the Pacific Ocean 30 km from shore!

3.0 OLD CLASS A RULE CONSIDERATIONS

It might be argued that since Channel 285A was allotted to San Clemente when the maximum power for a Class A station was 3 kW rather than the current 6 kW that the mileage separation requirements for San Clemente should be based upon the old 3 kW Class A rules. Even here there is not a suitable location where a Channel 285A transmitter could be located to serve San Clemente. The old Class A mileage separation requirements are:

<u>STATION</u>	<u>CITY OF LICENSE</u>	<u>CHANNEL</u>	<u>REQUIRED SEPARATION</u>
KKGO	Los Angeles, CA	+1st Adj. 286B	105 km
KDES	Palm Springs, CA	-1st Adj. 284B	105 km
KCBQ	San Diego, CA	+2nd Adj. 287B	69 km

Also plotted on Figure 1 is the 105 km distance from KKGO and KDES. It can be seen that even under these conditions there is no location where a transmitter could be located and comply with the old Class A rules.

4.0 RESPONSE TO COMMENTS OF STEVEN R. BARTHOLOMEW

On January 31, 1994, Steven R. Bartholomew ("Bartholomew") filed comments in this matter. It is Bartholomew's contention that there are two sites, the Southern California Edison ("Edison") site and the ATFS site which would not violate the provisions of Section 73.207(b). Bartholomew is in error.

Based upon the requirements of 73.207(b)(1), the Bartholomew proposal is short-spaced as follows:

<u>STATION</u>	<u>EDISON SITE</u>	<u>ATFS SITE</u>
KKGO	-7.6 km	-10.0 km
KCBQ	-2.4 km	

Based upon the old 3 kW Class A mileage separation requirements, the Bartholomew proposal is short-spaced as follows:

<u>STATION</u>	<u>EDISON SITE</u>	<u>ATFS SITE</u>
KKGO		-2.0 km
KCBQ	-2.4 km	

The short-spacing is also shown in Figure 1 where the two sites proposed by Bartholomew are shown and it can be seen that neither site complies with either 73.207(b)(1) nor the old 3 kW Class A separation rules.

5.0 SUMMARY

In order to preserve the integrity of the Commission's Mileage Separation Requirements, as contained within Section 73.207(b), Channel 285A should be deleted from the Table of Allotments and assigned to an area where compliance with the Commission's rules is possible.